

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GAYLE J. EVANS, JR.

PLAINTIFF

v.

CAUSE NO.: 5:22-CV-00037-DCB-BWR

CHANCE J. EVANS

DEFENDANT

MEMORANDUM OPINION AND ORDER

Before the Court is Chance J. Evans ("Defendant")'s Motion to Enforce Settlement Agreement [ECF No. 98] (the "Motion to Enforce") and his First Amended Motion to Enforce Settlement Agreement [ECF No. 108] (the "Amended Motion"). Gayle J. Evans, Jr. ("Plaintiff") responded in opposition [ECF No. 99] to the Motion to Enforce, but he did not respond to the Amended Motion. Having carefully reviewed the parties' submissions, the transcript of the settlement conference that United States Magistrate Judge Bradley W. Rath conducted, and the law related thereto, the Court finds that the settlement should be enforced.

BACKGROUND EVENTS

This diversity case involves a dispute between two brothers over the ownership and management of a family-owned nursing home

facility located in Natchez, Mississippi. Plaintiff, a Montana resident, and Defendant, a Mississippi resident, each participated in a settlement conference at the United States District Court for the Southern District of Mississippi in Natchez, Mississippi, on June 8, 2023. All parties were present in person and represented by their respective legal counsel. With Magistrate Judge Rath presiding, the parties reached a settlement of the lawsuit and announced the settlement on the record:

MR. REED [Defendant's counsel]: Okay. The Natchez Nursing Home property will be -- an LLC will be created, a Mississippi LLC, managed by Chance Evans. Thirty-eight percent of that nursing home property will be owned by G.J., or Gayle Jackson Evans, Junior; the remaining will be owned by Chance Jackson Evans. The trust currently that G.J. has will quitclaim to G.J., and then G.J. will convey his interest to the LLC. All parties, both plaintiff and defendant, will reaffirm that all the personal property in Mississippi owned by Gayle Evans, Senior, at the time of his death is jointly owned by the parties. And I don't think I messed up anything in relation to Harrison County.¹

¹ Earlier in the settlement proceedings, the parties reaffirmed on the record their agreement regarding the division of certain real property that they inherited from their father:

Judge, there's a 10.5-acre tract and a 120-acre tract that Gayle Evans, Senior, conveyed to both Gayle Evans, Junior and Chance Evans, signed in 2011, filed in 2014. That remains undivided real property in Harrison County as Mr. Dowdy said. And there is an executor's deed from the estate comprised of two tracts, 17.2 acres and approximately 2.71 that is solely owned, exclusively owned by Gayle Jackson Evans, Junior, also known as G.J.

Settlement Conf. Tr. [ECF No. 108-1] at 3:21-4:3.

THE COURT: Mr. Dowdy, did Mr. Reed accurately announce the terms of the parties' settlement?

MR. DOWDY [Plaintiff's counsel]: Yes, sir.

THE COURT: Were there any material terms of the settlement that were not included in the announcement?

MR. DOWDY: No, sir.

Settlement Conf. Tr. [ECF No. 108-1] at 3:21-4:3. The Court then administered the oath to Plaintiff, who gave the following sworn testimony:

THE COURT: ... Mr. Evans, you were present in the courtroom when the terms of the settlement were announced; is that correct?

MR. GAYLE JACKSON [Plaintiff]: Yes.

THE COURT: And did you hear the terms of the settlement as they were announced?

MR. GAYLE JACKSON: Yes.

THE COURT: And do you understand the terms of the settlement?

MR. GAYLE JACKSON: Yes.

THE COURT: Are you in agreement with the terms of the settlement?

MR. GAYLE JACKSON: Yes.

THE COURT: Do you understand that the settlement of this matter will bring this case to a full and final conclusion?

MR. GAYLE JACKSON: Yes.

THE COURT: Do you understand that as a result of this

settlement, this case will be dismissed by the United States District Court Judge?

MR. GAYLE JACKSON: Yes.

THE COURT: Do you understand and are you in agreement that this case is ready for the district judge to enter an order or a judgment of dismissal with prejudice?

MR. GAYLE JACKSON: Yes.

Settlement Conf. Tr. [ECF No. 108-1] at 6:8-7:7. The Court entered its Order of Dismissal [ECF No. 97], which dismissed the case with prejudice to all parties but retained jurisdiction to enforce the settlement.²

To the Court's knowledge, since the settlement conference, Plaintiff has not conveyed his interest in the nursing home property to a jointly-owned Mississippi limited liability company as the parties agreed under oath.³ Because Plaintiff did

² In pertinent part, the dismissal order states: "... this case is hereby dismissed with prejudice as to all parties. If any party fails to comply with the terms of this settlement agreed to by all parties, any aggrieved party may move to reopen the case for enforcement of the settlement agreement, and if successful, all additional attorneys' fees and costs from this date shall be awarded to such aggrieved party or parties against the party failing to comply with the agreement. The Court specifically retains jurisdiction to enforce the settlement agreement. [ECF No. 97].

³ In his Amended Motion, Defendant outlined the agreed-upon conveyance structure as Plaintiff "... first executing a Quitclaim Claim [sic] deed from Gayle Evans, Jr., as beneficiary of the G.J. Evans Jr. Revocable Living Trust to Gayle Evans, Jr., individually, any interest said trust held in the nursing home property. ... Gayle Evans, Jr., also agreed to execute a Warranty

not prepare the contemplated quitclaim deed and warranty deed to transfer his interest, Defendant's counsel filled the void and prepared those legal instruments. [ECF No. 98-3] at 14-23. Plaintiff has not signed the proposed deeds. According to counsel, the agreed-upon limited liability company has not been formed at the Mississippi Secretary of State's office, and a formal operating agreement has not been finalized and executed by the parties. Defendant proposed a draft operating agreement, which Plaintiff rejected. Plaintiff did not prepare or propose his own version of an acceptable operating agreement.

Finally, the Court finds it noteworthy that Magistrate Judge Rath held an in-person status conference on January 4, 2024, after Defendant filed the Motion to Enforce. The notice of hearing on the docket warned: "ALL PARTIES MUST BE PHYSICALLY PRESENT AT THE CONFERENCE." Only Plaintiff failed to appear. See Docket Minute entry, 1/4/2024.

LAW AND ANALYSIS

Mississippi law, which applies in this diversity action, strongly favors the settlement of disputes by agreement of the parties. Hastings v. Guillot, 825 So. 2d 20, 24 (Miss. 2002);

Deed to convey all of his undivided individual interest in the nursing home property into the Limited Liability Company with Chance Evans serving as manager." [ECF No. 108] ¶ 2.

accord Mid-South Towing Co. v. Har-Win, Inc., 733 F.2d 386, 391 (5th Cir. 1984) ("Compromises of disputed claims are favored by the courts.") (citations omitted) (internal quotation marks omitted). Courts ordinarily will enforce a settlement absent fraud, mistake, or overreaching. Chantey Music Publishing, Inc. v. Malaco, Inc., 915 So. 2d 1052, 1055 (Miss. 2005); Hastings, 825 So. 2d at 24; First Nat'l Bank v. Caruthers, 443 So.2d 861, 864 (Miss. 1983). The Mississippi Supreme Court has provided guidance regarding where the Court may begin its inquiry: " ... in order for there to be a settlement, there must be a meeting of the minds." Viverette v. State Highway Comm'n of Mississippi, 656 So. 2d 102, 103 (Miss. 1995). Mississippi law requires that the party claiming benefit from the settlement must prove by a preponderance of the evidence that there was a meeting of the minds. Id.; Hastings, 825 So. 2d at 23.

"Federal courts have held under a great variety of circumstances that a settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced." Cia Anon Venezolana De Navegacion v. Harris, 374 F.2d 33, 35 (5th Cir. 1967). Consistent with these guiding principles, "a district court has inherent power to recognize, encourage, and when necessary enforce settlement agreements reached by the parties.'" Del Bosque v. AT&T Adver., L.P., 441

Fed.Appx. 258, 260 (5th Cir. 2011) (quoting Bell v. Schexnayder, 36 F.3d 447, 449 (5th Cir. 1994)).

In accordance with the Mississippi Supreme Court's guidance, the Court will begin its inquiry by determining whether there was a meeting of the minds. The record reveals that the Court need look no further than the transcript of the settlement agreement. Settlement Conf. Tr. [ECF No. 108-1]. In court and under oath, Plaintiff - represented by his counsel - declared to Magistrate Judge Rath and all persons present that he had heard the terms of the settlement as they were announced, he understood the terms of the settlement, he agreed with the terms of the settlement, and that the case was ready for dismissal with prejudice. Settlement Conf. Tr. [ECF No. 108-1] at 6:12-7:7. Based on Plaintiff's own sworn testimony, the Court finds that there was a meeting of the minds, and a settlement agreement was reached by the parties at the June 8, 2023, settlement conference. This conclusion is evidenced in writing by the conference transcript and memorialized in the Order of Dismissal. [ECF No. 97].

In addition to arguing that there was no meeting of the minds (which the Court rejects), Plaintiff's fundamental objection to the settlement seems to be that, as a 62% owner of the limited liability company, Defendant will have a quorum and

control. [ECF No. 99] at 2-3. This may be true, but it also is a material term of the settlement to which Plaintiff unequivocally agreed. Plaintiff agreed on the record that he would own 38% of the LLC and that Defendant would own the remaining ownership interests. Settlement Conf. Tr. [ECF No. 108-1] at 5:9-13. Plaintiff also agreed that Defendant would manage the LLC. Id. at 5:9-11.

Plaintiff further asserts that: "***In retrospect***, the proposed operating agreement that the Defendant has now presented ... is so fundamentally unfair and one sided in favor of the Defendant that its submission and the motion to enforce its execution is nothing short of bad faith." [ECF No. 99] ¶2 (emphasis added). The Court disagrees.

First, since the date of the settlement conference, Plaintiff has made no attempt to propose his own version of an operating agreement and has exerted no constructive effort to finalize the terms of an operating agreement with Plaintiff. Plaintiff has permitted Defendant's counsel to do all the legal drafting in furtherance of the settlement, and Plaintiff has made no serious contribution to that process. Second, in Mississippi, the absence of a written operating agreement is not the death knell for a limited liability company. In such situations, the LLC and its members are governed by the

applicable provisions of the Revised Mississippi Limited Liability Company Act, Miss. Code Ann. §§ 79-29-101 to -1317. Coast Plaza LLC v. RCH Cap. LLC, 281 So. 3d 1125, 1132 (Miss. Ct. App. 2019) (Wilson, J.). As Judge Wilson (formerly of the Mississippi Court of Appeals and now serving on the United States Fifth Circuit Court of Appeals) explained: "The Act's statutory requirements serve as 'default rules' governing limited liability companies that do not have an operating agreement; those requirements are not optional guidelines for limited liability companies' members to follow, or disregard, as convenient." Id. Lastly, the Court does not accept the notion that Plaintiff should be permitted to renege on the parties' agreement so that he can dodge a deal that "in retrospect" he now regrets. Saeed v. Kamboj, No. CV 17-13427, 2019 WL 3526710, at *7 (E.D. La. June 21, 2019) ("Nor can she create a new interpretation and argue there was never a meeting of the minds so that she can get out of a deal she made, but now seems to regret."). What strikes the Court as unfair on this record is the idea that Plaintiff's breach of the settlement agreement should be condoned.

In closing, the Court wishes to address Plaintiff's assertion that the settlement is not enforceable because "it fails to set forth sufficiently definite material terms." [ECF

No. 103] at 1. To the contrary, at the settlement conference, Plaintiff's counsel represented on the record to the Magistrate Judge that there were no material terms of the settlement that were not included in the announcement of terms. Settlement Conf. Tr. [ECF No. 108-1] at 5:23-25. If there were specific terms that Plaintiff required to be included in a future operating agreement as a condition to settlement, he should have negotiated his required terms prior to the settlement conference and ensured that they were announced at the court proceeding. The record is clear that he did not.

CONCLUSION

The evidence shows that a settlement was achieved. By refusing to execute the deeds that were a material term of the settlement, Plaintiff is in breach of the parties' settlement agreement. Because Plaintiff has breached the agreement, Defendant is entitled to enforcement of the settlement. Under the express terms of the Order of Dismissal, Defendant also is entitled to recover his attorneys' fees and costs expended in enforcing the settlement from the date of the Order. The Court will review and rule on a properly presented motion for attorneys' fees, should Defendant wish to file one with the Clerk of Court.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Enforce Settlement Agreement [ECF No. 98] and his First Amended Motion to Enforce Settlement Agreement [ECF No. 108] are **GRANTED**;

IT IS FURTHER ORDERED that Defendant, as manager, is authorized to form, and promptly shall form, the limited liability company agreed to at the settlement conference by filing the appropriate certificate of formation with the Secretary of State of the State of Mississippi. Until the parties are able to finalize an operating agreement, the limited liability company shall operate without an agreement in accordance with Mississippi law;

IT IS FURTHER ORDERED that Plaintiff shall execute and properly file the deeds contemplated by the settlement no later than fourteen (14) days from the date of formation of the limited liability company referenced above in this Order; and

IT IS FURTHER ORDERED that the Motion for Reconsideration [ECF No. 105] is dismissed as moot.

SO ORDERED, this the 4th day of March 2024.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE